

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 77 – SB 1236

March 6, 2019

SUMMARY OF ORIGINAL BILL: Requires an ultrasound to determine the presence of a fetal heartbeat. Prohibits abortions from the point a fetal heartbeat is detected. Creates exceptions for medical emergency.

Requires the person determining the presence or absence of a fetal heartbeat to record the estimated gestational age of the fetus, the ultrasound method used, the date and time of the test, and the results of the test in the pregnant woman's medical record. Requires that the pregnant woman be offered the results of the ultrasound, including if a fetal heartbeat is detected, in person or by telephone.

Allows for a civil cause of action if the pregnant woman is not given the required information or is given false information. Authorizes damages, court costs and reasonable attorney's fees.

Requires a physician who performs an abortion or attempts to procure a miscarriage under the medical emergency exception to declare in a written statement to be placed in the woman's medical records that the procedure is necessary and the specific condition that constitutes the medical emergency. Repeals the Tennessee Infants Protection Act enacted by Public Chapter 353 of the Public Acts of 2017.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENTS (005424, 005428): Amendment 005424 deletes all language after the enacting clause. Prohibits any abortion being performed during the viability of a pregnancy. Defines viability as the presence of an intrauterine fetus with a heartbeat.

Establishes that this new section governs abortion. Further establishes that Tenn. Code Ann. §§ 39-15-201, 39-15-211, and 39-15-212 should not be enforced unless this section is temporarily or permanently restrained, enjoined, or otherwise unenforceable and only in compliance with specific criteria. Requires any conduct committed be prosecuted under the statute in effect at the time of the commission of the offense.

Allows for an affirmative defense to any criminal prosecution if the abortion was performed or induced, or attempted to be performed or induced, by a licensed physician and the physician determined, in the physician's good faith medical judgment, based upon the facts known to the

HB 77 – SB 1236

physician at the time that the pregnancy was not viable or the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant women.

Prohibits an abortion if performed on the basis of a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health. Creates certain conditions the physician must comply with for the affirmative defense to apply.

Except in a medical emergency, prohibits a physician from performing or inducing, or attempting to perform or induce, an abortion upon a pregnant woman, unless, prior to the performance or inducement of the abortion, or the attempt to perform or induce the abortion, the physician determines, in the physician's good faith medical judgement, that the pregnancy is not viable.

Requires the physician to make that determination by using a test that is consistent with the physician's good faith understanding of standard medical practice and appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and the woman's pregnancy.

Requires the physician to record in the pregnant woman's medical record the estimated gestational age of the unborn child, the test used for detecting a fetal heartbeat, the date and the time of the test, and the result of the test.

Restates it is a Class C felony and requires the license of the physician to be revoked if an abortion is purposely performed, induced or attempted to perform or induce upon a women when the pregnancy is viable. Restates it is a Class A misdemeanor for violation of viability determination or failure to record the required information in the pregnant woman's medical record.

Amendment 005428 deletes and replaces language from the bill as amended by amendment 005424 to establish that if an intrauterine fetal heartbeat is present, then it is established that the heartbeat belongs to a person with all of the legal rights and privileges of personhood.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- No new prosecutions will occur or penalties will be issued from the restatement of the current Class C felony or Class A misdemeanor included in the proposed legislation. Therefore, any impact to incarcerations is considered not significant.
- Based on information provided by the Department of Finance and Administration, Division of Benefits Administration (Benefits Administration), the proposed legislation

may result in an increase in ultrasounds; however, it is assumed they will meet Benefit Administration's carrier's medical necessity requirement and will not significantly impact any managed-care plans for employees of state government, local government or local education agencies.

- Based on information provided by the Division of TennCare (Division), abortions are only covered under emergent circumstances; therefore, any fiscal impact to the Division is estimated to be not significant.
- Any necessary rule changes by boards under the Division of Health Related Boards can be accommodated within the appropriate board's regularly-scheduled meetings at no additional cost.
- Based on information provided by the Administrative Office of the Courts, the proposed legislation would not result in a significant increase in caseloads for the state and local courts. Any increase in expenditures will be absorbed within existing state and local resources.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/vlh